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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,973	03/08/2005	Xavier Miret Gayet	P/189-358	1342

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OSTROLENK FABER GERB & SOFFEN  
1180 AVENUE OF THE AMERICAS  
NEW YORK, NY 100368403

EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/516,973

Applicant(s)

GAYET, XAVIER MIRET

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                  |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                             | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/29/06</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### **Information Disclosure Statement**

1. Receipt is acknowledged of an Information Disclosure Statement, filed 29 September 2006, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

### **Specification**

2. The abstract of the disclosure is objected to because of the use of legal phraseology "said mold" in line 4. Correction is required. See MPEP § 608.01(b).

### **Claim Objections**

3. Claims 6 and 8 are objected to because in lines 5 and 6 of each claim the amended language "the cavities receiving the plastic material accumulates once it has been melted" is awkward. Applicant is requested to amend the claims. Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 8, in each claim, the limitations "an inner profile" and "an outer profile" each render the claim vague and indefinite. The claim does not particularly point out the structural relationship between the two profiles and other elements of the

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claimed device. It is unclear from the claim if the "inner wall" and the "outer wall" set forth in claim 1 are one and the same as the "inner profile" and "outer profile" set forth in claims 6 and 8. For the sake of this Office action, the examiner is interpreting the limitations "an inner profile" and "an outer profile" to be one and the same as the limitations the "inner wall" and the "outer wall" previously set forth in claim 1. If such is not the case, then applicant is required to distinctly point out in the claim the structural relationship between the two profiles and the two walls.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gayet (**EP 1,110,701**) in view of Sfikas et al. (**US 6,254,707**).

The Gayet reference discloses as seen in figure 2, a device for sealing containers including: a sealing sheet (7) arranged on the mouth of the containers (at 8), a mold (3) supporting the peripheral flap of the container, a plurality of sonotrodes (1), the mold having a wall (9) which includes grooves for welding the sealing sheet to the mouth of the containers. The Gayet reference meets all of applicant's claimed subject

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matter with the exception of the mold having an inner wall and outer wall, with the outer wall of a slightly larger height, finished in an angled edge profile. The Sfikas et al. reference discloses an ultrasonic sealing device including a die (10) featuring two concentric walls with an inner wall (14) for welding the sheet layers (41, 42, 43) and an outer wall (12) of a slightly larger height finished in an angled edge profile for cutting the sheet layers (41, 42, 43) -- as seen in figures 9-11. As seen in figure 10 of Sfikas et al., the inner wall has a continuous linear edge (claim 2). As seen in figure 9 of Sfikas et al., the inner wall has a broken edge (claim 3). As seen in figure 11 of Sfikas et al., the inner wall and outer wall are separate and are independent, that is the portions which extend downwardly from cavity (24) (claim 4). As seen in figure 11 of Sfikas et al., the inner wall and outer wall are joined, forming a single wall, that is the portions that extend upwardly from the cavity (24) (claim 5). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Gayet device for sealing containers by having modified the wall (9) of the mold (3) to have comprised an inner wall and outer wall, with the outer wall of a slightly larger height, finished in an angled edge profile, as suggested by Sfikas et al., in order to seal and cut the material layers to leave a finished edge running parallel and adjacent to the seal applied to the margin of the article. Additionally, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Gayet device for sealing containers by having included the inner wall with a continuous linear edge (claim 2), the inner wall with a broken edge (claim 3), the inner wall and outer wall are separate and are independent (claim 4), and the inner

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wall and outer wall are joined, forming a single wall (claim 5), as suggested by Sfikas et al., in order to seal and cut the material layers to leave a finished edge running parallel and adjacent to the seal applied to the margin of the article.

8. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 3 and 5 above, and further in view of Kuroda (**US 3,629,035**).

The Gayet device for sealing containers, as modified by Sfikas et al., meets all of applicant's claimed subject matter with the exception of the edge of the inner wall is transversely located in extension of the edge of the outer wall. The Kuroda reference discloses a similar type of heat sealing arrangement including an edge (5 - where the "W" is located) of the inner wall is transversely located in extension of the edge (4) of the outer wall. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Gayet device for sealing containers by having modified the inner and outer walls to have had the edge of the inner wall be transversely located in extension of the edge of the outer wall, as taught by Kuroda, in order to provide a single wall for both sealing and cutting the material layers.

### **Response to Arguments**

9. Applicant's amendment and corresponding arguments (page 9, second through fifth paragraphs) filed 29 September 2006, with respect to the objection to the drawings have been fully considered and are persuasive. The objection to the drawings has been withdrawn.

10. Applicant's amendment and corresponding arguments (page 9, eighth and ninth paragraphs) filed 29 September 2006, with respect to the objection to the specification have been fully considered and are persuasive. The objection to the specification has been withdrawn.

11. Applicant's amendment and corresponding arguments (page 10, first and second paragraphs) filed 29 September 2006, with respect to the objection to the claims 2-9 have been fully considered and are persuasive. The objection to the claims set forth in the previous Office action has been withdrawn. However, a new objection to claims 6 and 8 is set forth above in this Office action.

12. Applicant's arguments regarding the prior art rejections set forth in the previous Office action, filed 29 September 2006, have been fully considered but they are not persuasive. Applicant argues at pages 10 and 11, beginning with the seventh paragraph, that the Gayet reference expressly teaches a device for cutting the thermoplastic layer, with the cutting device being separate from the welding mold, and that since Gayet expressly teaches a cutting device separate from a welding mold it would not be obvious to modify and indeed would contradict the express teaching of Gayet with the teachings of Sfikas et al.

In response to applicant's arguments against the Gayet reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Gayet reference teaches one embodiment in figure 3 which includes a

cutting member but it also teaches another embodiment in figure 2 which does not include a cutting member. Furthermore, it is important to view the combined teachings and suggestions of both the Gayet and Sfikas et al. references as a whole, and not to view each reference individually.

In response to applicant's argument that it would not be obvious to modify Gayet, and indeed would contradict the, allegedly, express teaching of Gayet, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this instance, the combined teachings of the prior art provide motivation to combine the teachings of Gayet and Sfikas et al. In fact, a review of the Gayet reference does not expressly disclose what applicant is arguing. The feature which applicant is arguing is with regard to the embodiment of figure 3. The examiner is aware of the teachings of the embodiment of figure 3 of Gayet, but is relying on the embodiment of figure 2 of Gayet which teaches a mold with a single wall. Furthermore, the prior art reference to Sfikas et al. teaches the specific feature of a mold die with an inner wall and an outer wall, with the outer wall having a slightly larger height in order to cut the materials being ultrasonically sealed together. Finally, the Sfikas et al. reference provides express motivation for why one would combine its teachings and suggestions. Since the Gayet reference recognizes the desire of cutting the sealed edge (as discussed with regard to



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the embodiment of figure 3), but the embodiment of figure 3 requires two moving elements, i.e. the mold wall (9) and the cutter (11). It seems that a person of ordinary skill in the art would be sufficiently motivated to combine the teachings and suggestions of Sfikas et al. with Gayet so that one would be able to use the Gayet device to seal as well as trim cut the sealed edge for an improved appearance. Thus, the references as a whole when view for all they teach, would permit one skilled in the art to ultrasonically seal a package and also trim cut the sealed edge in one station with one action of a combined sealing/cutting mold.

The rejection of the dependent claims 2-5 and the rejection of claims 7 and 9 in further view of the Kuroda et al. reference are considered proper in light of the teachings and suggestions of the prior art references applied.

### **Conclusion**

**13.** For the record, no prior art has been applied in regards to claims 6 and 8 because these claims are considered too vague and indefinite.

**14. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

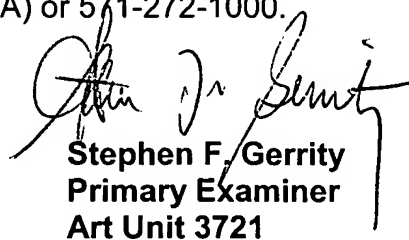
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen F. Gerrity  
Primary Examiner  
Art Unit 3721

4 December 2006